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No. 91-512

Supreme Court, U.S.

FILED

OCT 30 1991

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

JILL S. KAMEN,

Petitioner,

vs.

KEMPER FINANCIAL SERVICES, INC. and
CASH EQUIVALENT FUND, INC.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

RESPONDENT KEMPER FINANCIAL SERVICES, INC.'S RULE 42.2
MOTION FOR JUST DAMAGES AND COSTS

Pursuant to Supreme Court Rule 42.2, respondent Kemper Financial Services, Inc. ("KFS") respectfully requests this Court to award it just damages and costs, which KFS has incurred in responding to the petition for a writ of certiorari that petitioner Jill S. Kamen has filed in this case. In support of its motion, KFS states the following.

1. Petitioner filed the present certiorari petition on September 25, 1991, and KFS filed its brief in opposition on October 25, 1991. As demonstrated in KFS's opposition, the court below faithfully followed the instructions which this Court set forth in its prior decision in this case (Pet. App. 32 n.10), and the decision of the court below is correct. Thus,

the petition does not present any issue with any colorable basis, let alone an issue warranting plenary review by this Court.

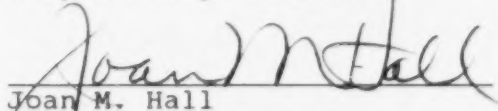
2. The issues presented for review in the petition pertain to the application of the pre-suit demand requirement to this shareholder derivative action brought under Section 20(a) of the Investment Company Act of 1940, 15 U.S.C. § 80a-20(a). To date, petitioner has filed nine briefs addressing the demand issue at every level of the federal court system. In the course of those briefs, petitioner repeatedly has altered her position and raised new arguments. For example, the first issue presented for review in the present petition is that the holding of the court below that a pre-suit demand was required in the circumstances of this case is "inconsistent with the federal policy underlying the proxy fraud provisions" of the 1940 Act. (Pet. i.) However, petitioner did not present to the court below any such argument concerning the alleged limitations which federal policy places on the application of the demand requirement.

3. The present petition is the third petition for certiorari that petitioner has filed in this action. Although petitioner's Section 20(a) claim has been dismissed pursuant to every conceivably applicable rule of decision during the protracted course of this litigation, she nonetheless persists in seeking to revive that claim by any device, including the invocation of arguments which were neither raised nor decided below.

4. Petitioner's vexatious and wholly inappropriate litigation strategy has compelled KFS to devote considerable time and expense to responding to her ever-changing arguments.

For the foregoing reasons, KFS requests that this Court award it just damages and costs which KFS has incurred in responding to the present petition, including attorneys' fees, single or double costs, and any other relief that the Court deems appropriate.

Respectfully submitted,



Joan M. Hall

Counsel of Record

Joel T. Pelz

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(312) 222-9350

Attorneys for Respondent

Kemper Financial Services, Inc.

Dated: October 30, 1991

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

JILL S. KAMEN,

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CERTIFICATE OF SERVICE


Joan M. Hall, counsel of record for respondent Kemper Financial Services, Inc., certifies that she caused Respondent Kemper Financial Services, Inc.'s Rule 42.2 Motion for Just Damages and Costs in the above-entitled cause to be served by depositing copies of same in the United States Mail in Chicago, Illinois on October 30, 1991, first-class postage prepaid, and addressed to the following counsel:

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& Lerach
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All parties required to be served have been served.


Joan M. Hall

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JOEL T. PELZ

October 30, 1991

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OFFICE : THE CLERK
SUPREME COURT, U.S.

Clerk of the Supreme Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: Kamen v. Kemper Financial Services, Inc.
No. 91-512

Dear Sir:

Enclosed for filing is an original and twelve copies of Respondent Kemper Financial Services, Inc.'s Rule 42.2 Motion For Just Damages And Costs. I have enclosed two additional copies which I would like to have file stamped and returned to me in the enclosed pre-stamped, self-addressed envelope.

Thank you for your assistance.

Very truly yours,


Joel T. Pelz

JTP/agw

cc: Richard M. Meyer, Esq.
Clifford E. Yuknis, Esq.
Martin M. Ruken, Esq.